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UTILITIES COMMISSION

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October 27, 2009

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-08-22
Rule H

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Post-Hearing Brief on Reconsideration in the above matter.

Very truly yours,

Lisa D. Nordstrom

LDN:csb
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-08-22
AUTHORITY TO MODIFY ITS RULE H)	
LINE EXTENSION TARIFF RELATED TO)	IDAHO POWER COMPANY'S
NEW SERVICE ATTACHMENTS AND)	POST-HEARING BRIEF ON
<u>DISTRIBUTION LINE INSTALLATIONS.</u>)	RECONSIDERATION

At the technical hearing held on October 20, 2009, the Commission provided an opportunity for Parties to file a post-hearing brief summarizing their respective positions. Idaho Power Company (hereinafter "Idaho Power" or "Company") hereby submits its Post-Hearing Brief on Reconsideration and urges the Commission to affirm the findings it made in Order No. 30853.

I. Order No. 30853 Requires Those That Cause Costs to be Incurred to Pay Those Costs.

Idaho Power initiated this proceeding to implement changes to its Rule H in furtherance of one of the fundamental principles of electric utility regulation; that to the extent practicable, utility costs should be paid by those entities that cause the utility to incur the costs. This principle is often referred to as "cost-causation" and is one of the

bedrocks of utility regulation. Idaho Power's Rule H is a good example of how the Commission exercises its jurisdiction to address a "cost-causation" by requiring those entities that cause Idaho Power to incur additional costs to pay those additional costs. If the "cost-causers" do not pay, the electric rates for the utilities' other customers will be higher than they would otherwise be. In light of current circumstances, if that result is allowed, Idaho Power's rates are neither "just and reasonable" as required by Idaho Code § 61-503 nor non-discriminatory and non-preferential as required by Idaho Code § 61-315.

It is true that under Order No. 30853, Idaho Power would invest less toward line installations than it has in the past by limiting its investment to terminal facilities. The Company makes many investments for new customers for the numerous parts of its system that comprise its electric service, and the fact is that Idaho Power's investment per customer is increasing. There are two principal drivers that effect growth in rates over time: (1) inflation and (2) growth-related costs. The growth in rates over the past five years (over 21 percent) has outpaced pure inflation, demonstrating that growth is not paying for itself. Idaho Power's Answer to Petitions for Reconsideration at 8. Other than Rule H, no means of assessing the costs of serving new customers directly to those specific customers currently exists.

To the extent that Order No. 30853 requires a new customer payment greater than that made to serve existing customers, it is a reflection that different circumstances exist in 2009 than did in 1997 when the Commission issued Order No. 26780. Rule H addresses the costs that must be paid by individuals who are not currently customers of Idaho Power for the opportunity to become customers. If the new line installation investment is solely to provide service to specific applicants/new customers, the

Commission is authorized by law to require that the applicants/new customers bear the cost of that new investment. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 421, 690 P.2d 350, 356 (1984). So long as all potential new customers/applicants are treated in a like manner, there is no unlawful discrimination.

Line installation charges offset the actual per-customer cost of physically connecting to Idaho Power's distribution system and have no relationship to existing or past customers. In light of the Company's increased investments in generation and transmission that must be made to serve both old and new customers on its system as a whole that will be paid for by the entire rate paying public, it is reasonable and prudent for the Commission to require that connection costs for individual customers be more fully funded by the individual customers causing them. Having developers/applicants fund line extensions will also reduce ratepayer exposure to speculative development, at a time when the Company has currently installed primary (backbone) line and transformers to more than 20,000 lots without new customers taking service. Tr. at 280.

II. Order No. 30853's Adoption of a Standard Terminal Facilities Allowance Ensures that New Customers Are Treated Similarly.

Regardless of whether construction is inside or outside of a subdivided development, Order No. 30853 requires the Company to provide customers and developers a fixed allowance equal to the Company investment toward their required terminal facilities. Customers are eligible to receive maximum allowances up to \$1,780 for single-phase services and \$3,803 for three-phase services per service attachment, whereas developers of subdivisions (with no connected load) are eligible to receive the same amounts for *each transformer installed* within a development. In no instance will allowances exceed the cost of the facilities provided.

The \$1,780 allowance approved by Order No. 30853 was based upon the current installation cost of Standard Terminal Facilities for single-phase service. Standard Terminal Facilities costs include the costs associated with providing and installing one overhead service conductor and one 25 kVa transformer to serve a 200 amperage meter base. Tr. at 267. Based upon this allowance, customers that require non-typical, larger than standard transformation outside of subdivisions will be required to pay, as a contribution in aid of construction ("CIAC"), those work order costs that exceed the Standard Terminal Facilities cost of \$1,780. Developers receive a \$1,780 allowance toward installed transformers and are responsible for the costs of new primary conductor constructed between the existing distribution facilities and the customers' terminal facilities, as well as any secondary conductor constructed between the transformers and junction boxes.

Most customers receive the equivalent of overhead service attachments without any personal investment because the allowance (credit) provided by the Company (investment) covers the entire cost of the required service. Customers requesting services beyond the "standard" or most commonly installed facilities are required to pay all costs above the provided allowance. If the customer wants underground service, or if the customer is building a large home that requires larger than standard transformation, or if the customer is some distance from existing facilities, that customer is responsible for the additional costs of providing service. As a result, customers are treated and charged equitably based on a standard overhead service, thereby mitigating intra-class and cross-class subsidies.

III. Order No. 30853 Maximizes Limited Resources Available for Facility Investment.

If Idaho Power had unlimited access to capital, the Building Contractors' recommendation to continue requiring the Company to spend significant amounts of capital on distribution facilities, so that customers will experience the impacts of inflation as it occurs, might not impact the Company's ability to replace or upgrade existing facilities. However, to the extent that the Company must invest in new distribution facilities for the benefit of new customers, the Company will have less capital available for other capital projects. The Building Contractors argue that new investment benefits existing customers by lowering average costs, but those benefits must be examined from a wider perspective and compared to the benefits that may be derived if the limited capital resources are utilized for other purposes.

Customer CIACs reduce rate base growth and Idaho Power does not earn a return on them. A larger CIAC payment by a customer or developer will reduce the responsibility of existing customers to pay for facilities that do not serve them. Now is the time for the Commission to reduce Company investment in new distribution facilities in order to allow for investment in other infrastructure that is more valuable to customers.

IV. Building Contractors' Proposed Alternative to Order No. 30853 Is Flawed.

The Building Contractors' proposal as described by Dr. Slaughter's testimony would provide an upfront allowance to developers (not customers) of residential subdivisions equal to \$1,232 *per lot* within the subdivision. He compares this embedded cost number to the Commission-ordered allowance within residential

subdivisions of \$1,780 *per installed transformer*. This is not a valid comparison for several reasons.

First, the Building Contractors' \$1,232 per lot allowance within a residential subdivision is based upon historical investments that the Company has made on behalf of customers. Those computations include embedded costs related to investments the Company has made in substations, primary lines, secondary lines, transformers, services, and meters that have been allocated to the residential class in rate proceedings.

However, the Building Contractors' proposed \$1,232 allowance does not reflect costs found in most residential subdivision work orders, which typically include only a primary line (or backbone), a number of transformers, and secondary line to individual lots. There are no costs associated with substations, services, or meters in residential subdivision work orders, yet these costs are included in the \$1,232 amount. Tr. at 276. Service conductor and meters are not installed within subdivisions until later when homes are actually constructed and customer load occurs. Thus, the Building Contractors' proposal would provide allowances to developers for costs that are not incurred or included in the developer's work order to construct facilities necessary for the residential subdivision. The Building Contractors' embedded cost allowance proposal is also inconsistent with the Company's treatment of other customer classes, where only transformers (not primary or secondary lines) are considered for allowances. Tr. at 277.

It should also be noted that the Building Contractors' proposed per lot allowance of \$1,232 included the costs of both primary and secondary transformers that receive allocation to residential class in general rate case proceedings. New residential

requests under Rule H provisions rarely, if ever, include primary transformers. Tr. at 277-78.

Second, per Order No. 30853, residential customers outside of subdivisions receive allowances based solely on Standard Terminal Facilities. They receive no allowances for the costs of substations, primary lines, or secondary lines. The Building Contractors' proposal would offer an unlawful preference to developers by offering a more generous allowance for speculative lots inside a residential subdivision based on facilities that are not considered for allowances to actual new residential customers outside of subdivisions.

Third, because transformers often serve more than one ultimate customer, offering developers an allowance on a per lot basis rather than on a per transformer basis can also lead to the unreasonable result that the allowance is greater than the cost of terminal facilities (in this case transformers) required to provide service. By contrast, if additional residential customers request service that can be served by an existing transformer, under Order No. 30853, those customers only receive a terminal facilities allowance reflective of service conductor and metering because the transformer is already there.

V. The Commission Has Exclusive Jurisdiction over Utility Facility Relocation Expense.

The Idaho Legislature has given the Commission authority to regulate how Idaho Power charges its customers for facility relocations through a variety of statutes. Idaho Code § 61-501 vests the Commission with the power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of the Public Utilities Act. Idaho Code § 61-503 and -

507 provide the Commission with the power to set rates, charges, rules, regulations and practices of the utilities it regulates. Utilities are prohibited by Idaho Code § 61-315 from granting any preference or disadvantage to customers with regard to rates, charges, services or facilities. Idaho Code § 61-301 requires that utility charges for any product or commodity be just and reasonable lest it be declared unlawful. Finally, Idaho Code § 61-302 requires that every public utility maintain service and facilities that are “adequate, efficient, just and reasonable. A specific reference granting the Commission authority over “relocation of utility facilities located in public rights-of-way” is not necessary.

In exercising its jurisdiction, the Idaho Supreme Court has noted that the Commission is allowed all power necessary to effectuate its purpose. In *Grindstone Butte Etc. v. Idaho Power*, 102 Idaho, 175, 627 P.2d 804 (1981), the Court explained that the Commission operates in the public interest and can take into consideration relevant criteria in setting utility rates and charges. The Idaho Supreme Court clearly envisioned Commission jurisdiction over Rule H-type issues when it stated in *Idaho State Homebuilders, supra*, that the Commission could establish non-recurring charges for line extensions.

Idaho Power constructs relocations of its facilities for its customers every day. Those relocations are governed by Rule H, which has been in effect in one form or another for at least thirty years. If a public road agency asked Idaho Power to relocate its facilities not in the public right-of-way in order to accommodate construction of a new building for the public road agency, Rule H would apply and would require that the public road agency bear the cost of that relocation. The Petitioners do not assert that the Commission has no jurisdiction over utility facility relocations in those situations.

It is only when utility facilities are located in public road rights-of-way that the petitioners assert that the Commission is divested of jurisdiction over utility facility relocations. In that one instance, they argue an exception to the general rule is legally mandated. Yet there is nothing in Idaho Code §§ 61-301, -501, -502, or -503 to suggest that the Legislature divested the Commission of its authority to determine how utilities will recover the cost of relocating utility facilities in their rates if public road relocations are involved.

The Commission is obligated to protect the public interest and is charged with ensuring that costs of utility facility relocation have not been unreasonably charged to Idaho Power customers when, in fact, the relocation of utility facilities wholly or partially benefits a person or entity other than the public. If costs are being unreasonably allocated, the Commission has the authority to provide a remedy. It is reasonable and prudent that the Commission should approve rules that require the third party causing facility relocation to reimburse Idaho Power so that the costs of the relocation are not unfairly shifted to the Company's customers.

VI. Section 10 of Rule H Should be Applied to LIDs.

In their briefs, the Petitioners argue that local improvement districts (or "LIDs") must be excluded from the application of Section 10 of Rule H. They argue that because LIDs are created by government units, i.e., a city, highway district, or public road agency, they must be excluded from the application of Section 10 of Rule H. Idaho Power respectfully disagrees. First, a LID is not a public road agency that is charged with operating and maintaining public roads. An LID is simply a vehicle by which taxation can occur but not be included in the general budget of a public road agency. The only function the LID performs is to collect money. Where the local improvement

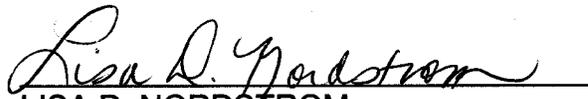
district is paying for the road improvements in question, the local improvement district should also pay for the cost of relocating the power line as required for the improvements. The local improvement district typically derives funding from adjacent private businesses and land owners and those parties, who are directly benefiting from the power line relocation, should bear the costs of the relocation rather than the utility's customers as a whole. Idaho Power does not believe it is unreasonable to expect a LID to include an amount to cover the cost of utility facility relocation in the amount of money it will fund.

In light of problems the Company has experienced with LIDs as referred to in the testimony of Company witness David Lowry and the fact that it would be very easy for LIDs to include cost of utility relocations in their initial funding, Idaho Power urges the Commission to retain LIDs among the entities subject to Section 10 of Rule H.

VII. Conclusion.

The Commission's findings in Order No. 30853 were based upon substantial and competent evidence in the record. For the reasons described above and in the entirety of the Commission's record, Idaho Power respectfully requests the Commission issue an Order affirming its findings in Order No. 30853 and denying the Petitions for Reconsideration filed in this case.

DATED at Boise, Idaho, this 27th day of October 2009.


LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of October 2009 I served a true and correct copy of IDAHO POWER COMPANY'S POST-HEARING BRIEF ON RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

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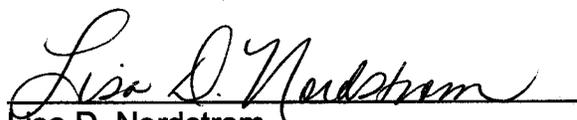
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